1950.

File No. O. Contract 50

Legal Department

A **BRANCH**

Subject:— Opinions under the Indian Contract Act 1872

P 29 E

File No. O. Contract 150

78 A

K

C O N T E N T S.

Legal Department Volume O.Contract/1950.

Sr.No.	R.I./ O.No.	Subject.	Pages.
	O.Contract/1950.	Opinions under the Indian Contract Act, 1872.	
1.	19361/24.11.49. 2507/21.2.50.	Re: Contract entered into by the forest Department with a contracter in respect of (1) falling trees marked by the Foresh Department, converting them and delivering the resultant material duty checked at the Forest Department; and (2) clearfelling, burning, reheaping and reburning the contract area. Contention of the contractor is that he is entitled to all the material obtained from trees which were not marked for felling, while forest department considers that he is entitled to get all the material excluding such as is considered fit to be removed to the Dept. R.L.A. is requested to advice on the above point.	1-6
2.	21309-50 3344/10.3.50.	Re: Agreement for supply of firewood. Question whether contractor is entitled for the original rate as specified in the agreement for the supplies made by him after the expiry of the original contract.	7-12
3.	5008/23-3-50. 4666/5.4.50.	Re: Agreements between the Forest Department and plywood Manufacturing companies. Whether rest rollers belong to the companies.	13-16
4.	7287/27.4.50. 6914/22.5.50	Question whether the contract which is not in a statutary form can be enforced. Indian Contract Act, 1872. Sec. 8.	17-20
5.	241-Confl/22/24-4-50. 362-Confl/26/27-5-50 363-Confl/26/27-5-50.	Question whether in absence of any written agreement between the contracter and Govt. it would be in order to cancel the first contract and to call for fresh tenders or whether such action would result in a suit being filed against Govt. for breach of contract.	21-28
6.	8487/16.5.50. 8085/14.6.50.	Re: Contract entered into by State Govt. before merger. Question whether suchcontract can be terminated by this Govt. after merger without involving any legal liability.	29-3[illegible]

Sr.No.	R.I./O.No.	Subject.	Pages.
7	9870/13.7.50	Re: Construction of the weir at higher level and use of water for domestic purposes by Gokak Mills. Notice to be issued to Gokak Mills in respect of above matters.	33-34
8	9871 13.7.50	Re: Supply of water to Gokak Mills. Contract between Government and the Gokak Mills. Demand for compensation by Gokak Mills.	35-40
9.	9612 10-7-50.	Question whether the agreements in respect of contract executed by the officers who are not authorised to sign such agreements under Sec. 175(3) of the G. of I. Act, 1935, are valid.	41-42
10.	10154 14.6.50. 10348 21.7.50.	Re: Purchase of opium by a contractor on behalf of Balasinor State from Godhra Sub-treasury before the merger. Question whether the contractor is entitled to refund of cost price and other incidental charges in respect of purchases ~~made in respect of purchases~~ made after the merger as per arrangements prevailing in the state before the merger.	43-46
11.	6157 11.4.50. 11501 12.8.50.	Question whether the excess payment made to the contractor can be ~~made to the contractor can be~~ recovered from the security deposit kept by him.	47-50
12.	11430 5.7.50. 11238 8.8.50.	Re: Shifting of Police Chowky situated on the Government land which is granted to the Municipality by Government for constructions of Feet-Path. Questions (1) Whether the Police are bound to remove the Chowky and (2) Whether in that case the Government can claim the cost of putting up a chowky elsewhere from the Corporation. (Copies not taken).	51-52
13.	11620 7.7.50. 12326 29.8.50.	Question whether there is any legal objection to the insertion of a clause in the agreement to be entered with the forest contractors to safeguard cooperative institutions which loan money to such contractors.	53-56
14.	11074/50 12596 2.9.50.	Re: Recovery of principal debtor's dues from his surety Indian Contract Act, 1872.Sec.128	57-62
15.	16598/12.9.50.	Re: Grant of fishing rights in the Mahi river - by Govt. to a cooperative society. Question whether any legal complications are likely to arise if the sanction given to the Society is now withdrawn.	63-66

Sr. No.	R.I./O.No.	Subject.	Pages.
16.	18374 / 7.10.50.	Re: Agreement entered into with M/s. Larson and Toubro Ltd. by Govt. in respect of purchase of 6 caterpiller tractors at Rs.39,148/- each. Charging of Rs.56.020/- by the Co. for the sixth tractor on account of the devaluation of the rupee. Question whether the Co. can in view of the devaluation of the rupee, claim the price ~~x~~ at the enhanced rates.	67-70
	15552 / 7.11.50.		
17.	19519 / 26.10.50.	Question whether the contract between the secretary, Provincial Prohibition Board and the Excelsior Publicity Co. can be terminated, and damages claimed. Indian Contract Act, 1872. Sec. 72.	71-74
	15262 / 2.11.50.		
18.	16627 / 25.11.50.	Question whether the acceptance by Government of the tender submitted by a contractor subject to certain conditions would imply the acceptance of the tender subject to the condition attached by the contractor.	75-76
19.	19778 / 31.10.50.	Re: Purchase of 600 tons of Superphosphate by Government from M/s. National Fertilisers at Rs.225/- per ton. Request from the company to pay them a difference of Rs.30/- per ton as the Tariff Board have fixed the purchase price at Rs.255/- per ton. Question whether Government is bound to pay at higher rate.	77.80
	17286 / 6.12.50.		
20.	23066 / 22.11.50.	Question whether the claim of the contractor with regard to the works carried out by him in about 1928 i.e. about 22 years ago, is time barred. (Copies not taken)	81-82
	17999 / 20.12.50.		
21.	18321 / 28.12.50.	Re: Auction of ----- Pearl and chank fishery lease - Baroda, Acceptance of bid by the Auctioner.	83-86.
22.	18914 / 16.10.50.	Re: Contract in respect of construction of the bridge over the Jagbudi River in Ratnagiri District. Question regarding payment of compensation to the contractor on account of loss suffered by him due to unprecedented floods.	87-90.
	18370 / 29.12.50.		

Office of the R.L.A.

Although the provisions of the contract are in some respects ambiguous and conflicting (See Cl. I(f) and (f) (10) & others relating to felling of trees and clearing of forest and Cl. II (d) (1) which prevents clearing of forest), they are at any x rate clear on the point of privileges and remuneration of the contractor. Consequently the contractor would be entitled to claim only timber and scanting pieces of the description mentioned in Cl. IV(a) and to nothing more. The view taken by the Conservator of Forests is correct.

Id/-P.M.L.
20/2
Remembrancer of Legal Affairs.

U.R. to A.& F.D. No. 2507 dated the 21st February 1950.

BKS. 21/6/ 4c.

Office of the R.L.A.

Agreement for Supply of fireweed to Kalyan Camps.

Under condition (XI) of the agreement the contract expired after three months from the date of execution i.e. on 31st January 1949. The agreement does not stipulate about the quantity of fireweed and the fact that it is mentioned in the tender would show that it was an approximate requirement. Besides it was the contractor who failed to supply fireweed regularly as a consequence of which the administrator had to resort to condition (VIII) of the agreement and get the supply supplement from other contractors. Consequently the contractor does not appear to have any legitimate grievance in this respect. The supply made by the contractor after 31st January 1949 could not be considered as done under the agreement which had already expired and the contractor would be entitled to the rate of Rs. 69 which was communicated to him by the administrator.

Id/-P.M.L.
9/3
Remembrancer of Legal Affairs.

U.R. to R.H.D. No. 3344 .dated the 10th March 1950.

BKS. 21/6/ 4c.

Office of the R.L.A.

Agreements between the Forest Department and Plywood Manufacturing Companies. Whether rest rollers belong to the Companies.

Clause 1 of the agreement between the Government of Bombay and the Indian Plywood Manufacturing Co. Ltd. provides inter alia that the Company is granted the concession for a period of 40 years for the extraction of trees over six feet in girth over bark of the species named in the Schedule for which the Company agrees to pay a royality at the rate of one rupee per ton of 50 cubic feet of extracted material. Clause 3 provides how and which timber shall be extracted. Clause 27(n) prohibits the Company or its servants from cutting or removing any tree in contravention of clause 3. These are the only provisions in the agreement about the extraction and removal of the trees. There is no specific provision about rest rollers. From clause 1 of the agreement it would appear that the trees which the Company is authorised to extract and for which it pays royalty will be the property of the Company. If rest rollers are left out in the process because they are not useful for further peeling they would apparently be the property of the Plywood Company. There is no specific provision in the agreement that the rest rollers should revert to the Govern. ment. The view expressed by the Chief Conservator of Forests that the rest rollers are the property of the Company appears therefore to be correct.

2. The terms of the agreement entered into with the Karnatak Industrial and Plywood Company which are at slip V of the file below are similar to those ~~which~~ with the Indian Plywood Manufacturing Co. Ltd. and the abve remarks equally apply in the case of that Company.

Id/-P.M.L. 4/4
Remembrancer of Legal Affairs.

BKS. 21/6/ 4c.

U.R. to A.& F.D. No. 4666 ,dated the 5th April 1950.

Office of the R.L.A.

Indian Contract Act, 1872. Section 8.

Clause (2) of the tender notice is itself in the nature of an offer, of which the acceptance may be by performance of the condition of the proposal under section 8 of the Indian Contract Act. Clause (2) contains an offer that the right of quarrying stone etc. from the Kerthala quarry would be given to the person who quotes the highest figure of royalty for 100 c.ft. per year. Under section 8, performance of the conditions of a proposal .....is a an acceptance of the proposal. In the present case there was an offer to any one who performed the condition namely of quoting the highest royalty. Messrs. Bulliram and Co. having performed that condition on the first occasion, there was a concluded agreement between them and the Chief Administrator. Nevertheless, their claim to compensation can be successfully resisted. In the first place although there was a concluded agreement between the company and the Chief Administrator, it being not in the statutory form is not enforceable as a contract. Secondly, the Company have now made a fresh offer which is not the highest and therefore there is no acceptance by them of Government's offer and Government is not bound to accept their offer in preference to the more advantageous tender of Mr. Bhagwandas.

Id/-P.M.L.
Remembrancer of Legal Affairs.

R. to P. and G.D., No. 6914 ,dated the
22nd May 1950.

21/6/ 40.

D.O.No. Exf Confl. 362
Legal Department,
Secretariat,
Bombay, 26th May 1950.

Dear

Please refer to demi official No.S.108/393/D, dated the 10th April 1950, regarding tender from Messrs. Kisanlal and Sultanchand for supply of fuel. A copy of my opinion is enclosed herewith.

Yours

Id/-P.M.L.

Lt. Col. Madan Gopal Bhandari, I.M.S.,
Surgeon General with the
Government of Bombay.

BKS. 21/6/ 4c.

Office of the R.L.A.

The tender in Schedule No.IX of Messrs. Kisanlal and Sultanchand is for supply of certain quantity of charcoal, steamcoal and firewood stated in the Appendix during the period under contract commencing from 1st April 1950 to 31st March 1951 at the rates shown against them. By condition 3 the tenderer has agreed to supply any of these articles which may be ordered by the Medical Officer at the current local market rates. In condition 4 it is stated that the quantities stated in the Appendix are these estimated only. Condition 5 lays down that the said officer shall not be bound to take all or any of the articles enumerated in the Appendix in full or even in part of the estimated quantity. It is clear from this condition that if Government refuses to take any articles from the tenderer they are not liable to him in damages. The articles specified in the Appendix are to be supplied from time to time. In such a case where the party agrees to supply articles on certain terms as Government may order during a future period there is only an offer. The party cannot sue Government for not ordering any articles but if while the offer stands the Government does order any, the condition of the offer is x fulfilled, and the offer being thus accepted there is a complete contract which the tenderer is bound to perform. (Cf. 24 Bom. 97). The same principle was affirmed by the Privy Council on an appeal from the Province of Quebec in the case of R.V.Demers (1900) A.C.103 followed in Secretary of State V. Madho Ram 10 Lah 493. In the latter case Fforde J. at page 499 stated the principles governing such contracts as the present one briefly summarised by Atkin J. (later Lord Atkin) in Percival Lim v. London County Council Asylums and Mental Deficiency Committee (1918) 87 L.J.R. 677, 679 as follows :-

"It appears to me, to begin with that this contract is not a firm contract to take the whole of the goods

that are required. These tenders have been the subject of litigation before now, and they vary in form, but one knows that it is quite common for large bodies that require supplies over a year to ask for tenders and to obtain them, and it sometimes happens that the effect of the form of the tender with an acceptance is to make a firm contract by which the purchasing body undertakes to buy all the specified material from the contractor. On the other hand, one knows that these tenders are very often in a form under which the purchasing body is not bound to give the tenderer any order at all; in other words , the contractor offers to supply goods at a price, and if the purchasing body chooses to give him an order for goods during the stipulated time, then he is under an obligation to supply the goods in accordance with the order; but apart from that nobody is bound."

The tender in the present case is also accepted subject to the execution of a regular contract agreement with sureties and deposits. The acceptance of this stipulation being express this is really a case of acceptance with an added condition. In such a case there is no concluded contract but only a counter-offer and the agreement shall not be complete and operative until its terms are embodies in a formal document. (See Pollock and Mulla's Contract Act, pp. 45-48). Consequently it is open to Government to invite fresh tenders again for these articles.

Id/-P.M.M.
26/5
Remembrancer of Legal Affairs.

U.R. to Surgeon General No. 363-Confl., dated the 26th May 1930.
252

BKS. 21/6/ 40.

Office of the R.L.A.

Contract for electric installation in the Baroda Medical College Building.

There would be no legal objection to cancelling the contract unless it has been acted upon after the merger of the Baroda State. If however, the contract has been so acted upon, the only course open to Government would be to resort to condition 14 of the agreement and withdraw the rest of the work from the contractor.

Id/-P.M.L.
14/6
Remembrancer of Legal Affairs.

U.S. to P.W.D. No. 8085 dated 14th June 1950.

BKS. 21/6/ 4c.

Office of the R.L.A.

Construction of the weir at higher level and use of water for domestic purposes - by Gokak Mills.

A notice may in the first instance m be given to the Gokak Mills in respect of both matters and in the event of their declining to comply, the papers with the reply of the Mills may be forwarded to Legal Department for examining the whole case.

Id/-P.M.L.
12/7.
Remembrancer of Legal Affairs.

U.D. to P.W.D. No. 9870 ,dated the 13th July 1950.

BKS. 21/6/ 4c.

Office of the R.L.A.

By their letter No.3441/36-I.B.(II) dated 18-2-1948, Government informed Messrs. Forbes, Forbes, Campbell & Co., Agents of the Gokak Mills, Ltd., that Government had found it necessary to issue orders to supply one watering from the Dhupdal Storage to save the large area of rabi feedcrops from total failure, and Government was aware that this action was likely to affect the supplies reserved for the Gokak Mills and, therefore, Government would take necessary action to help the Mills to obtain their supplies of coal and arrange transport for it to Gokak Railway station if they considered this step necessary, and they were requested to arrange with the local management of the Gokak Mills to co-operate fully with the officers of Government. The Gokak Mills Ltd. have now made a claim of Rs 3,934-14-4 on the basis of the cost mf for using their steam stand-by plant to make up the deficit in the supply of water. The P.W.D. is of the view that the claim of the Gokak Mills was untenable, firstly because the supply of water as demanded by the Mills has been made from the storage tank and the fact that the level of the storage tank went below 23.5 ft. mark was in itself no ground for paying any compensation to the Mills. The R.L.A. is requested to advise whether the view taken by the P.W.D. is correct.

2. According to the contract between Government and the Gokak Mills, the Mills were entitled to the supply of 178.5 cusecs for ten x hours a day. It appears that prior x to Government's letter dated 18th February 1948, the Mills were in fact taking only about 140 cusecs. The tables at pp.89-99 show that excepting for the four days at the end of March and beginning of April and another period of 4½ days at the end of April and beginning of May, the Mills have not only taken 145 cusecs but have steadily gone on increasing their demand upto

the maximum permissible under the contract, namely, 178.5 cusecs. Unless it be established that the Mills made a demand upto the maximum and were refused that demand on account of the depletion of the water supply, the Mills would have no claim against Government. In his opinion No.21-P dated 21-6-1943, the H.L.A. has already pointed out that it is not a condition of the contract that Government should not allow the water level in the storage to fall below the mark of 23.5 ft. It is true that the practice of the Government in maintaining this level mark would indicate that in the opinion of the Government itself it was not prudent, having regard to their obligation under the agreement, to allow the water level to fall below that mark; and that was the reason why a letter of caution was addressed to the Mills. But so long as the Mills have in fact been supplied upto their maximum demand, they can have no claim on the mere ground that the level was allowed to fall below 23.5 ft. The tables at pp.89-99 show that while the level went on steadily falling and touched the figure of 15.5 ft. towards the end of April, the demand of the Company went on increasing upto the maximum of 178.5 cusecs and was in fact satisfied. This proves conclusively that the falling of the level did not in the least affect the supply which the Company had a right to demand. The tables show that at no time did Government refuse to comply with the Company's demands even upto the maximum; nor is there any evidence to show that because of the cautionary warning given by Government, the Company restrained its hands and demanded less by way of co-operating with Government's difficulties. On the other hand as explained above, as the level went on falling, the Company progressively increased its demand in the month of April. There is no material to suggest that the Company worked its stand-by plant as an additional source of generating energy because the supply of water for hydro-electric generation was in fact inadequate. Had that

been the case, the plant would have worked either every day or on days when the supply was refused to the Company. The fact that the plant was worked for a period of about four days towards the end of two months suggests that in all probability the Company followed that course in order to test whether their plant would work under full load. The Company have presented no facts to suggest that on the days when they actually worked their stand-by plant, they were obliged to do so because the requisite supply of water was not forth-coming. In other words, although the level may have fallen below 23 ft. and may have gone on falling until it touched the lowest point of 15.5. ft. this fall has not in fact in any manner adversely affected the contractual obligation between the Government and the Mills, and at all materiral times the Company did demand and was supplied water in terms of their contract, and on days when they asked for less supply, they did not do so because more supply was not available.

3. In these circumstances if the Company worked its stand-by plant, they cannot attribute that working to the failure of Government to abide by thier stipulation to supply water upto the maximum of 178.5 cusecs. Whatever cost the Company may have incurred in working their stand-by plant is entirely their concern, and it cannot be demanded from Government by way of compensation for breach of the contract. No question of reimbursing the Company for that cost, therefore, arises.

Id/-P.M.L.
10/7.
Remembrancer of Legal Affairs.

U.R. to P.W.D. No.9871 ,dated the 13th July 1950.

BKS. 21/6/ 4c.

Office of the R.L.A.

Govt. of India Act, 1935. Sec. 175(3).

As Mamlatdars and Mahalkaris were not authorised under section 175(3) of the Government of India Act, 1935, to sign the agreements (at p.23-5 ante), regarding the cultivation of Numbri Potatoes in Kharif Seasons of 1944 and 1946, under which the potato seeds were supplied to the cultivators, the contracts are void and the third alternative in condition 3 which provides that the price of the seed potatoes should be treated as a tagavi loan to be repaid within 1 year without interest and thereafter to be recovered as arrears of land revenue together with interest at 5½% cannot be enforced.

2. It may however be possible for Government to claim from the cultivators compensation under section 70 of the Indian Contract Act for the potato seeds supplied to the latter during the various seasons. The basis of the compensation would however, not be the same as the contractual price. It would be in proportion to the benefits enjoyed by the cultivators. What ultimately would be the quantum of compensation is a question to be decided by the Court (Pallonji Eduljee & Sons v. The Lonavala Municipality, 39 Bom.L.R.835). Since the point is not free from doubt a test case may be made. A case strong in evidence should be selected.

Id/-P.M.L.
8/7
Remembrancer of Legal Affairs.

U.R. to A. & F.D. No. 9612 dated the 10th July 1950.

BKS. 21/6/ 4c.

Office of the R.L.A.

Refund of cost price and other incidental charges to the Contractor of Balasinor State.

. The view taken by the Prohibition and Excise Commissioner is correct. The refund being in respect of the price of opium paid by the Contractor on behalf of the State would be legally admissible; and the fact that the Contractor was charged by the State less than what was permissible under the treaty would not detract from his claim for refund of the price of opium paid for the State.

Id/-P.M.L.
21/7
Remembrancer of Legal Affairs.

U.R.C.P. & S.D. No. 10348, dated the 21st July 1950.

BKS. 21/6/ 4c.

Office of the R.L.A.

Recovery of Excess payments made to contractor.

It will be seen from condition 7 of the contract entered into with Kanjibhai Jethabhai that when work of the value of Rs.500/- has been done the payment will be made only on approval of the specific work but when work which is estimated at more than Rs.500/- has been completed, the officer in charge can make payment on account but such payments cannot be construed to mean that work of that particular value has been completed. Such payments will be treated as payments on account and will be taken into account when making the final bill. In view of this, the payments made to the contractor in this case can be considered to be payments on account and it will be open to Government to claim refund of excess payment when making final settlements with the contractor. The excess sum of Rs.4,556-1-0 paid to the contractor. ~~xxxxxxx~~ cannot be recovered from the deposit lying with the Harbour Engineer because clause 7 does not contain any provision as per clause 15 of the contract, that the sum found to be due from the contractor on final ~~xx~~ settlement would be recovered from any money due to the contractor. Further, the contract does not also provide for recovery of sums due from the contractor as land revenue dues. Hence the only course open is to make adjustments in the final bill and if the contractor fails to refund the excess, to file a suit against him for recovery of the same.

Id/-P.M.L.
11/8
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 11501, dated the 12th August 1950.

BKS. 21/6/ 4c.

Insertion of a clause in the agreement with Forest Contractors to safeguard Co-operative Institutions which lean money to such contractors.

In Dunlop Pneumatic Tyre Co. V. Selfridge & Co (1915,A.C.847) Lord Haldane said that it was a fundamental xp principle of English law that only a person who is a party to a contract can sue on it and that the law knows nothing of a right gained by a third party arising out of a contract. That case was followed in Vandepitte v. Beferred Accident Insurance Corporation (1933 A.C.70). The proposal at A on page 76 ante is intended to safeguard the interest of the Bank which advances loans to the forest contractors. The Bank, not being a party to the contract between the Government and the forest Contracts, would not be entitled to enforce the covenant in respect of the proposal at A. If so, no useful purpose would be served by inserting such condition in the agreement.

Id/-P.M.L.
28/8
Remembrancer of Legal Affairs.

U.R. to A.& F.D.No. 12326 dated the 29th August 1950.

BKS. 21/6/ 4o.

With regard to the first point, the view taken by the Collector, Dharwar, does not appear to be quite correct. Under section 128 of the Indian Contract Act, the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. In the present case, the contract does not appear to provide that the remedy against the principal debtor should be exhausted before the surety is to be proceeded against. Consequently, it was open to the Society either to proceed against the debtor or against his sureties. The Society has proceeded against one of the sureties without exhausting its remedy against the principal debtor. It would be open to the sureties to proceed against the principal debtor for being indemnified. In the circumstances, the step taken by the Society to proceed against the surety Shri Ijantkar would not be unlawful.

2. On the second point, it appears that Shri Ijantkar has a legitimate grievance. It is not disputed that the Managing Committee did pass a resolution to take the decree obtained by Shri Ijantkar and recover the dues in execution of that decree. It appears that the resolution ~~xfxx~~ passed by the Managing Committee was subject to the approval of the General Committee, but Shri Ijantkar was given no intimation that the assignment of the decree would be subject to the confirmation by the General Committee. On the contrary, the Managing Committee did proceed with the execution and intimated the Court that Shri Ijantkar was exonerated from his liability to the Society in consideration of the assignment of the decree as a result of which

the Society was entitled to proceed against Shri Ijantkar's Judgment debtor. It may be that the General Committee did not approve of the action taken by the Managing Committee, but it did not inform Shri Ijantkar that its action was not approved by the General Committee and as such he was entitled to proceed against his debtor. On the contrary, the Managing Committee did proceed with the execution of the decree and got some immovable property attached but thereafter it did not actively proceed with the execution and allowed the decree to be time-barred. In the circumstances, Shri Ijantkar is not to be blamed for the ~~x~~ acts or defaults of the Managing Committee. His grievance being genuine it is a fit case for arbitration under section 54 of the Bombay Co-operative Societies Act, 1925. If the Society has suffered anything, and it appears it has suffered considerably, the Managing Committee members will have to be held responsible for it. The Registrar's suggestion may be accepted and Shri Ijantkar informed to apply for arbitration under section 54.

Id/-P.M.L.
1/9
Remembrancer of Legal Affairs.

U.R. to D.D.No. 12596 dated 2nd ~~August~~ Sept. 1950.

BKS. 21/6/ 4c.

Office of the R.D.A.

Grant of fishing rights in the Mahi river.

According to the provisions of the Indian Contract Act, an acceptance with a variation is no acceptance; it is simply a counter-proposal which must be accepted by the original promisor before a contract is made (See Kundanlal v. Secretary of State, 1939. 14. Lucknow. 710). It is true that by G.L.D.D. No.64/24717/F dated the 5th August 1950 Government accepted the proposal of the Collector and sanctioned the grant of fishing rights in the river Mahi in the Padra Taluka of Baroda District to the Ganesh Kahar Co-operative Society at an annual lease amount of Rs.6000/- for a period of three years with effect from 1st August 1950. But this was in the nature of an offer made to the Ganesh Kahar Co-operative Society and that Society without accepting it unconditionally requested Government to take into consideration their three requests, namely (1) remission in the past auction price; (2) the contract amount to be reduced as much as possible; and (3) the fishing area to be extended up to Vasad bridge of the Mahi river. These requests being in the nature of counter-proposals, the original order of Government dated the 5th August 1950 would not be deemed to have been accepted un-reservedly so as to constitute a contract. The fact that the Society started fishing on intimation of Government's order dated the 5th August 1950 would not create any rights in favour of the Sms Society to entitle it to enforce the contract. It would, therefore, be open to Government to revoke the original order dated the 5th August 1950 and no legal complications are likely to arise if it be so done.

Id/-P.M.L. 12/9
Remembrancer of Legal Affairs.

U.R. to D.D. No. 13024 ,dated the 12th September 1950.

BKS. 21/6/ 40.

Office of the R.L.A.

The question mf for consideration is whether Messrs. Larsen & Toubro can claim an enhanced price in respect of the sixth Caterpillar tractor supplied by them. It appears from the Company's letter dated 27-9-1947 which embodies the terms and conditions of the contract that though the price of a Caterpillar tractor was quoted at Rs.30,316/- that was only an estimate and the final price was to be settled only on the arrival of the tractors in Bombay on the basis of the principal's prices. Since the Company has to adjust its accounts with the principals in terms of dollars and since the exact price had not been fixed by the contract, the Company's claim at the enhanced rate will have to be accepted.

Id/-P.M.L.
7/11
Remembrancer of Legal Affairs.

U.R. to A.& F.D. No. 15552, dated the 7th November 1950.

BKS. 21/6/ 4c.

Office of the R.L.A.

Whether the contract between the Secretary, Provincial Prohibition Board and the Excelsior Publicity Company can be terminated.

It is now open to the Secretary, Provincial Prohibition Board, Bombay, to terminate the contract under clause 19 of the agreement and to claim damages from the Excelsior Publicity Company; but it is not possible to say what damages the Court is likely to award, for, what damages would be fair and reasonable would depend upon the circumstances of each case.

Id/-P.M.L.
1/11
Remembrancer of Legal Affairs.

U.R. to R.D. No. 15262 ,dated the 2nd November 1950.

BKS. 21/6/ 40.

Office of the R.L.A.

It appears from the letter dated the 16th February 1950, at page 79 ante that Shri Bhagwandas submitted his tender on the clear undrstanding that no expert of any stone of any sizes will be allowed from Santpur and Abu forest ranges for the purpose of constructing building, roads, tracks, culverts, bridges etc. His offer was accepted by Government by Government letter dated the 14th June 1950, and the acceptance was addressed to the Finance Department, the Revenue Department and the Accountant General, Bombay. Thereafter a draft lease was prepared without the condition attached to the tender by Shri Bhagwandas. The Collector reports in his letter dated the 13th September 1950, at page 137 ante that the Contractor's contention that the tender was accepted subject to the condition attached by him is untenable and he should be informed accordingly. The Political and Services Department appears to agree with the Collector and proposes to inform the Contractor that Government did not accept his tender subject to the condition as alleged by him. The Remembrancer of Legal Affairs is requested to advise.

2. The tender submitted by Shri Bhagwandas was in the nature of an offer and this offer was subject to the condition as mentioned in his letter dated the 16th February 1950. The acceptance by Government of his offer would imply the acceptance of the offer subject to the condition of Shri Bhagwandas appears to be valid. It appears from the Government's letter dated the 14th June 1950, at page 117 ante that no copy thereof was addressed to the Contractor. If Government's acceptance of the offer was not communicated to Shri Bhagwandas, it would be competent for Government to refuse to accept his offer. If, however, Government's acceptance has been communicated to him, Government would be bound by the condition attached to the tender of Shri Bhagwandas.

Id/-P.M.L. 24/11
Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 16627, dated the 25th November 1950.

BKS. 21/6/'4c.

Office of the R.L.A.

Whether Government is bound to pay for superphosphates at higher rate.

By Government Resolution, Agriculture and Forests Department No.87L, dated the 30th August 1948, Government authorised the Director of Agriculture to purchase from the National Fertilisers Limited, Poona, 600 tons of superphosphate at the rate of Rs. 225/- per ton f.o.r. Poona. The Director who had already placed the order with the firm confirmed it by his letter dated 11th September 1948 subject to any modifications in the selling price of pool superphosphate that will be fixed by the Ministry of Agriculture, Government of India. The firm supplied 550 tons of superphosphate during the period 22nd August 1948 to 25th October 1948 for which payment was made at the rate of Rs. 225/- per ton. Government of India to whom a reference was made states that during the period February to December 1949 purchases were made by them at rates ranging from Rs. 210 to Rs. 225 per ton and the purchase from this firm was paid at the rate of Rs. 22 255 per ton in accordance with the recommendations of the Tariff Board and that as regards purchases made by the Bombay Government prior to the formation of the Phosphatic Pool this rate will not be applicable. In the present case the firm had supplied 550 tons of phosphate prior to the formation of the pool. This Government is not therefore liable to pay the firm at the rate of Rs. 255 per ton. Apart from this, since the Director of Agriculture was not authorised by Government to modify the rate of purchase price, he could not have introduced the modification by his letter dated the 11th September 1948.

The letter is not issued in the name of the Governor of Bombay. This modified purchase price not being within the authority of the Director of Agriculture is not binding on Government and therefore Government is not liable to pay the extra amount of Rs. 30 per ton on 550 tons.

Id/-P.M.L. 6/12
Remembrancer of Legal Affairs.

U.R. to A. & F.D.No. 17286 ,dated the 6th December 1950.

BKS. 21/6/ 4c.

Office of the R.L.A.

Pearl and Chank fishery lease-Baroda.

The terms and conditions of the auction sale in the present case are not known. If there is no condition that the highest bid would be accepted there would be no concluded agreement x until and unless Government accepts any of the bids offered and in accepting such bid Government would be entirely unfettered . However, even in such cases Government should as a rule accept the highest bid in-as-much as the public are given to understand that the highest bid which is naturally most profitable to public revenues would be accepted. It would not be fair to the person making the highest offer that higher bid made behind his back should be accepted. In the peculiar circumstances of this case, it may be advantageous to cancel the tender proceedings and to hold an open auction.

Id/-P.M.L.
28/12
Remembrancer of Legal Affairs.

U.R.to D.D. No. 18321 ,dated the 28th December 1950.

BKS. 21/6/ 4c.

Office of the R.L.A.

Strictly speaking, the contractor would not be entitled to claim any compensation from Government when due to *vis major* he has suffered the loss (see cl. 20 of the agreement). However since the contractor has suffered heavily due to no fault of his, Government may *ex gratia* grant him some reasonable compensation.

Id/-P.M.L.
28/12
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 18370 , dated the 29th December 1950.

BKS. 21/6/ 4c.